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Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Leslye Krutko
Scott P. Johnson

SUBJECT: SEE BELOW

DATE: June 1, 2007

Approved

Date

5/31/07

COUNCIL DISTRICT: Citywide

INFORMATION

SUBJECT: REPORT ON ACTIVITIES UNDERTAKEN BY THE DIRECTOR OF HOUSING AND THE DIRECTOR OF FINANCE UNDER THE CITY COUNCIL'S DELEGATION OF AUTHORITY FOR THE PERIOD OF JANUARY 1, 2007 THROUGH MARCH 31, 2007

EXECUTIVE SUMMARY

This report details actions taken under the City Council's delegation of authority to the Director of Housing and the Director of Finance for the third quarter of fiscal year 2006-07. During this quarter, the Director of Housing approved modifications to five (5) existing loans, sixty-four (64) new rehabilitation loans and grants totaling \$1,084,010, two (2) energy grants totaling \$5,000, and business terms for a \$1,000,000 predevelopment and construction loan to Casa Feliz, L.P. The Director of Finance conducted one (1) Tax Equity and Fiscal Responsibility Act ("TEFRA") hearing on a proposed issuance of tax-exempt private activity bonds.

BACKGROUND

On September 4, 1990, the City Council adopted Ordinance No. 23589, which delegated to the Director of Housing certain specified authorities in the administration of the City's comprehensive affordable housing program (the "Delegation of Authority"). On May 23, 2000, the Delegation of Authority was amended by Ordinance No. 26127 to clarify certain sections and add several other provisions. On June 25, 2002, the Delegation of Authority was further amended by Ordinance No. 26657 to add several provisions delegating additional authority to the Director of Housing, the Director of Finance, and the City Manager. Subsequently, the City Manager delegated to the Director of Housing the contract authority granted to the City Manager.

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The Delegation of Authority is codified in Chapter 5.06 of the Municipal Code. This memorandum reports on activities undertaken pursuant to the Administration's delegated authority for the period of January 1, 2007 through March 31, 2007.

ANALYSIS

The Delegation of Authority ordinance authorizes the Director of Housing: to develop and implement additional guidelines for housing programs; to adjust terms on housing loans and grants; to change the funding sources of a loan; to convert loans to grants; to loan or to grant Housing and Homeless funds, Predevelopment funds, and Housing Rehabilitation Program funds; to negotiate and to execute grant agreements necessary to implement Council-approved programs adopted in the Annual Action Plan of the Consolidated Plan; to provide management for, and/or dispose of, properties acquired through direct purchase, foreclosure or deed-in-lieu proceedings; to formalize the City Council's policies and procedures regarding housing loan defaults; to apply for federal or State funding; to determine, within defined parameters, various terms and conditions of loans and grants previously approved by the City Council; to make adjustments, within defined parameters, to loans and grants previously approved by the City Council; and to make other technical changes.

Further, the DOA Ordinance delegates jointly to the Director of Housing and Director of Finance certain authority related to the City's issuance of tax-exempt, private-activity bonds to finance the development of affordable housing projects, and delegates to the Director of Finance the authority to hold TEFRA hearings on the City's proposed issuance of tax-exempt bonds to finance affordable housing projects.

ACTIONS TAKEN BY THE DIRECTOR OF HOUSING AND THE DIRECTOR OF FINANCE

Under the parameters of the Delegation of Authority, the Director of Housing and the Director of Finance have taken the following actions during the period of January 1, 2007 through March 31, 2007:

Modifications to Council-approved Loan Terms & Conditions:

Foreclosure Initiation Proceedings on Rehabilitation Loans:

On December 3, 1991, the City of San José made a deferred Housing Rehabilitation loan in the amount of \$124,988 to Lovie B. Spencer and Martha Spencer for the replacement of their single-family residence located at 33 Floyd Street. An affordability restriction was recorded on title in addition to the deed of trust, and the City's loan is now in first lien position. Upon the death of these borrowers, the property was inherited by their son, Lovie B. Spencer, Jr.

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Mr. Spencer, Jr., does not reside in the subject property, which has been rented out since he took possession. Therefore, the property no longer qualifies under our Housing Rehabilitation Loan Program for owner-occupants at qualifying income levels. Acceleration of the obligation, as described in the promissory note, automatically occurs with the passing of the original borrowers. Despite numerous attempts by staff over the past six years to resolve the situation Mr. Spencer does not plan to occupy the unit. On August 7, 2006, a demand for payment in full was sent to Mr. Spencer in the combined amount of principal and interest plus estimated equity share of \$331,975.57. To date, Mr. Spencer has made no attempt to contact the City. The required 90-day period between the demand letter and initiation of formal foreclosure proceedings expired; therefore, staff recommended that the matter be submitted to Standard Trust Deed Service Company to act as the City's agent in the foreclosure proceedings.

On January 3, 2007, the Director of Housing approved the initiation of foreclosure proceedings.

Foreclosure Initiation Proceedings on a Rehabilitation Loan:

On April 19, 1989, the City of San José made a deferred loan in the amount of \$18,024.50 to Anthony and Carmen Hewald for the rehabilitation of their single family residence located at 380 North 14th Street. In June 2002, the loan was converted to amortizing status.

The loan is currently in technical default. The City was notified by one of the borrower's daughters that Mr. Hewald had passed away in 1998 and that Mrs. Hewald passed away on December 26, 2005. Therefore, title of the property had been transferred to Marie and Barbara, Mr. & Mrs. Hewald's two daughters, as Co-trustees of the Hewald Trust. The two sisters disagree as to whether to keep or sell the property.

Given that the property is not currently legally owned and occupied by a qualifying household, and remains irreconcilable differences between the heirs on the property's disposition, there can be no assumption of the loan by the Trust. On November 1, 2006, the City therefore sent a formal demand letter to both sisters for payment in full of the outstanding loan.

Loan payoff had not been received; therefore, Staff recommended that foreclosure proceedings commence. On February 26, 2007, the Director of Housing approved the initiation of foreclosure proceedings on the Hewald's loan through Standard Trust Deed Service Company.

Tierra Encantada, L.P., - District: 5 - SNI: Mayfair

On June 25, 2002, the City Council approved an acquisition and predevelopment loan of up to \$4,000,000 to Community Housing Developers ("CHD") for the development of 93-unit rental apartments to be made affordable to extremely low-, very low-, and low-income households. The project included the acquisition of the parcel intended for building affordable for-sale units. Upon completion of the rental project in November 2005, the for-sale parcel was released and reconveyed from the \$4,000,000 deed of trust. In early 2007, CHD finalized its financing structure for the construction of the 12 for-sale Tierra Encantada Townhomes that will be sold to 8 moderate-income homebuyers and 4 market-rate homebuyers.

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On February 23, 2007, the Director of Housing approved the following recommendations under Section 5.06.340 A.1 and 5.06.340 A.3 of the Delegation of Authority:

- Extension of the maturity date of the existing City Loan on the Tierra Encantada Townhomes site from June 1, 2006 to September 30, 2008
- Subordination of the City Loan to two proposed senior construction lenders: First Republic Bank and Northern California Community Loan Fund.

All other terms and conditions remain unchanged.

Italian Gardens Family Apartments – District: 2 – SNI: N/A

In 2002, the City made a \$4,851,000 loan to Mid-Peninsula Housing Coalition (Mid-Pen) to develop a 146-unit mixed-income project with 2 unrestricted managers' units that is located at 1500 Almaden Road. The project is managed by the Mid-Peninsula Housing Management Corporation. City inspected the project on December 6, 2006 and found it to be in good condition.

Because the project's 2007 cash flow was anticipated to be slightly negative, Mid-Pen requested that the project's Replacement Reserves account be funded at \$350 per unit, per year on a permanent basis instead of escalating that figure for inflation over the life of the loan. In 2002, the reserves were funded per the loan's requirement at the \$350 per unit level with annual increases of 3.5%, and are currently at \$415.69 per unit.

On March 2, 2007, the Director of Housing approved a modification to the Replacement Reserves funding requirements to roll back the 2006 and 2007 annual funding levels to \$350 per unit (\$51,800 per year) to meet the project's short-term needs, but then to resume the 3.5% annual funding increases beginning in 2008.

All other terms and conditions remain unchanged.

Approval of a Write-off of an Emergency Mobilehome Repair Loan

On October 3, 1988, the City of San José made a loan in the amount of \$3,718 to Stanley A. Clancy, Sr., for emergency repairs to his mobilehome located in the Town and Country Mobilehome Park at 195 Blossom Hill Road, Space #217.

The collateral for this loan was a 1961 single-wide coach, purchased in 1987 for the amount of \$18,500, which is likely to have no significant value today. A Housing Department inspector recently discovered that neither Mr. Clancy nor his mobilehome were any longer in Town and Country Mobilehome Park and Mr. Clancy's whereabouts remain unknown. Staff therefore determined this loan to be uncollectible and recommended the write-off of the borrower's obligation.

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On March 9, 2007, the Director of Housing approved the write-off of the emergency mobilehome repair loan to Stanley A. Clancy.

Loans/Grants Terms and Conditions:

Casa Feliz Apartments – District: 3 – SNI: University

On August 15, 2006, the City Council approved a Disposition and Development Agreement (DDA) with Casa Feliz, L.P. for the Casa Feliz Apartments project. Casa Feliz, L.P. proposed to demolish the existing three-story facility and redevelop the site with a four-story building with 59 studio rental units and one studio manager's unit. It is anticipated that 21 (35%) of the units will be set aside for developmentally disabled persons with the remaining units available to the general public meeting the units' income restrictions. Simultaneously, the City Council also approved a City funding commitment of up to \$1,000,000 for the development of the project; which will be secured by a Deed of Trust.

On February 23, 2007, the Director of Housing approved the specific business terms for the Council-approved construction and permanent loan of \$1,000,000 to Casa Feliz, L.P. or its affiliate, for the development of the Casa Feliz Apartments, under Section 5.06.335 of the Delegation of Authority as follows:

Casa Feliz Loan Terms:	Construction Phase	Permanent Phase
Loan Amount:	\$1,000,000	\$1,000,000
Interest Rate:	3.00% Simple	3.00% Simple
Loan Term:	24 Months	360 Months
Repayment:	P&I at the sooner of Maturity or permanent bond financing	Residual Receipts of 50% of Net Cash Flow after payment of GP Management Fee
Total Affordable Units:	52 Extremely Low-, 7 Very Low-income, and 1 Unrestricted Manager's Unit	52 Extremely Low-, 7 Very Low-income, and 1 Unrestricted Manager's Unit
Affordability Term:	55 Years	55 Years

Housing Trust Fund Grants:

None to report.

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Housing Rehabilitation and Improvement Loans and Grants:

During this quarter, the Director of Housing approved the following Loans and Grants:

<u>ACTIVITY</u>	<u>NUMBER</u>	<u>AMOUNT</u>
REHABILITATION LOANS	6	\$290,000
REHABILITATION GRANTS	58	\$4794,010
ENERGY GRANTS (stand-alone)	2	\$5,000
TOTAL:	66	\$1,089,010

Predevelopment Loans:

None to report

TEFRA Hearings:

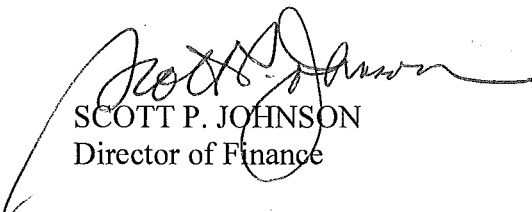
The Director of Finance held a TEFRA hearing for the Casa Feliz Apartments Project on February 2, 2007 to notify the public of the City of San José's intent to issue tax-exempt bonds in an amount not to exceed \$11,000,000. Prior to this hearing, on January 18, 2007, the Director of Finance and the Director of Housing issued an inducement declaration for the purpose of allowing the expenditures incurred prior to the date of bond issuance to be reimbursed with tax-exempt bond proceeds.


<u>Project Name</u>	<u>Units</u>	<u>Location</u>	<u>Bond Amount</u>	<u>Mayor's Certificate No.</u>
Casa Feliz Apartments	60	525 South Ninth, San José, CA	\$11,000,000	No. 2007-1 Adopted

The public had the opportunity to comment on project during the TEFRA hearing. Notice for this meeting was published at least fifteen (15) days prior to the hearing date.

COORDINATION:

Preparation of this report has been coordinated with the City Attorney's Office.


SCOTT P. JOHNSON
Director of Finance


LESLYE KRUTKO
Director of Housing

For more information, contact Leslye Krutko, Director of Housing, at (408) 535-3851.